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2023 Inter-American Human Rights Moot Court Competition

Hypothetical Case: Equality and Human Rights – Confronting Racial Discrimination¹

Julia Mendoza et al. v. State of Mekinés

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1. Mekinés is a South American country and one of the largest in the hemisphere, with an estimated surface area of over five million square kilometers. It has a population of 220 million inhabitants, making it the 10th most populous country in the world. Mekinesian society is considered multiethnic, with a diverse mix of peoples and ethnicities, including Indigenous people, whites of European descent, Creoles, Asians, and Afro-descendants.
2. The country gained its independence in 1822 and became a Federal Republic comprising 32 states. The official and most widely spoken language is Portuñol, and it is the largest Portuñol-speaking country in the world. Its economy is the largest in South America, and it is considered an economic powerhouse because of its wealth of industry and natural resources, including oil. Despite its abundant wealth, Mekinés is also one of the most unequal countries in the world, with just 10% of its population receiving close to 60% of the income produced each year.

3. Mekinés is a member of the Inter-American Commission on Human Rights (IACHR) in

an international proponent of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which it ratified

history of colonization and slavery. It also has a history of racial discrimination. Although its population is diverse, about 80% of the population is of African descent. The current Constitution of Mekinés was

by the President, Carmen



the Constitution states that the fundamental duties and responsibilities of the State of Mekele to its people include “



the first six months of the ministry's restructuring, its priority issues were: combating abortion, including participation in international anti-abortion meetings; advocating for adoption; combating pedophilia; addressing violence against women; and combating suicide. These agendas are supported and prioritized by religious organizations and are heavily promoted in churches and by Christian politicians.

10. Since his election campaign, the current president of Mekines has stressed that he would defend the values he positioned as fundamental in Mekinesian society: the defense of the traditional family, the right to life from conception, and the repudiation of "gender ideology." At the beginning of his administration, the president issued an executive order to remove all the sitting members of the National Council for the Protection of Children and made changes that, in practice, diminished the body's power to make decisions and issue positions on the matter. The order, published on August 18, 2018, brought new changes to the structure of the council, which is provided for in the Children's Rights Act. Among other measures, the order removed all current members of the council and established new rules for selecting the members



incidents never reach the competent authorities because people are unaware of the reporting channels or lack trust in the system. The discrepancy in data is due to society's growing distrust of State institutions, as there are allegations that State agents are themselves the perpetrators, which is why people avoid filing complaints.

13. Data from Zero Discrimination, a hotline operated by the Ministry of Justice to receive complaints of racial violence, indicate that, between 2015 and 2019, 2,712 reports of religious violence were filed in Mekínés. Of these reports, 57.5% were for attacks on people practicing religions of African origin, especially Candomblé and Umbanda. In February 2016, the Ministry of Human Rights published its Report on Intolerance and Religious Violence in Mekínés (2011 – 2015), in which it found that religious intolerance is a structural problem that is often obscured in society. It further notes that, at the state level, the lack of sufficient data to ascertain the true extent of this problem remains a challenge.
14. In July 2016, the National Human Rights Ombudsperson's Office of the Ministry of Human Rights published a report stating that episodes of religious violence are on the rise in Mekínés and, among all faiths practiced in the country, 2m e c ? í È n





21. As for the political landscape, the tensions and polarization that have marked the country in recent years are rising in the run-up to the November 2023 elections. With the president's mobilization of support from conservative groups, particularly the evangelical Christian sectors, human rights organizations are anticipating an increase in violence against African-based religions.
22. Serious incidents have also occurred against families that practice religions of African origin. Especially in recent years, there has been a documented trend of cases of



but it has ceased to be invited to participate in this review in recent years. The Committees of the National Human Rights Plan also included the National Committee to Combat LGBTI+ Discrimination. Unfortunately, this committee was also disbanded, along with the Department for the Promotion of LGBTI+ Rights, which used to assist the executive branch in developing public policy.

26. In the area of religious freedom, the fight against religious intolerance and racism was a priority agenda of the former Ministry of Human Rights only until 2018, despite the increasing number of complaints received by the ministry in the last four years. *“Mekínés is a Christian and conservative country based on the traditional family.”* These were the closing words of the president’s speech at the opening of the United Nations General Assembly in 2020. The protection of the family and children is provided for in the constitution; however, it does not identify any single family composition as the only valid one. Thus, the restricted notion of family highlighted in the president’s speech and defended by the conservative and religious base of the government excludes different types of families. Through constant action in different governmental spheres, the executive branch has implemented a set of public policies that reinforce this restricted notion of the family as a rights holder. The Ministry of Women, Family, and Human Rights is a key agency for the implementation of these policies.
27. One of the most notable projects and programs of the executive branch is the creation of the National Observatory of the Family (NOF), whose objective, according to its official documents, is to *“promote family-related studies and research, leading the way in the formulation of public policies focused on the family. It also aims to help subsidize family policies, as well as the exchange and dissemination of scientific*

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making small incisions in a person’s skin for the purpose of protection—and staying in the community for a specific period of time to perform the rituals and obligations of the religion, in a lawful custom known as *Recogimiento* (seclusion). The ritual took place on December 17, 2020.

30. Displeased with Julia’s new relationship, Marcos reported Julia and Tatiana to the regional Council for the Protection of Children for abusing Helena, taking advantage of the fact that the chief councilor attends the same evangelical church as his mother. The report was filed on January 3, 2021, when the activities of the regional Council for the Protection of Children were reactivated after the Christmas and New Year holidays. Marcos alleged in his communication to the council that Helena was being forced to remain in the religious community against her will, that she was a victim of bodily harm during the initiation process, and that she was exposed to her mother’s reprehensible behavior in a new relationship that was detrimental to the child’s development. He further argued that being in her mother’s custody jeopardized the child’s physical and emotional development, and that Julia could not take care of the child because her sexual orientation, her cohabitation with her partner, and her African-based religion were negatively influencing the child’s development. Marcos also contended that the legal recognition of same-sex couples as normal has distorted the meaning of the human male-female couple, thus altering the



33. Regarding the civil aspects, the judge of first instance decided on May 05, 2021, that custody should be transferred, considering that Marcos's family had already arranged for Helena's enrollment in a school run by the Catholic Church that his mother attends, which is rated more highly than the school Helena has been attending for years. In reaching his decision, the judge also considered several photos submitted by Marcos of Helena's room in his house, with toys, a place to study, and other comforts. He concluded the decision by drawing attention to the importance of family structure and the maintenance of religious and societal values being passed down to the child and asserting that the mother's influence also affected Helena's view of society and religious freedom. He ultimately based his decision on the following arguments:

(i) "the respondent, making her sexual choice explicit, lives with her partner in the same home where her daughter lives, altering the normalcy of family life with her, putting her personal interests and own well-being before the emotional well-being and the appropriate socialization of her daughter"; and (ii) "the respondent put her personal interests and well-being before the fulfillment of her maternal role, in conditions that may affect the child's subsequent development, and the court can only conclude that the plaintiff makes more favorable arguments in favor of the best interests of the child—arguments which, in the context of a heterosexual and traditional society, are of great importance."

34. Julia appealed the decision on May 21, 2021, contending that to this day in Mekinés there are Christian religious practices that are not analyzed or even discussed from this perspective of "interference in values." For example, she noted that a

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home posed any risk to Helena’s well-being. The judge explained that homosexuality is not a pathology, but a normal human behavior. He held that the courts must base their decisions on the concrete and demonstrable facts of the case and not on assumptions or fears based on prejudices. He therefore ordered that custody be returned to Julia and Tatiana.

36. Marcos appealed the appellate court’s decision to the Supreme Court on September 19, 2021, alleging that the decision was inconsistent with the federal law that protects the best interests of the child, and that the court had committed a serious and egregious abuse by prioritizing the mother’s right over that of the daughter, failing to exercise sound judgment and failing in its duty to protect her.

37. On May 5, 2022, despite Julia and Tatiana’s efforts to expose the discriminatory nature of the case and regain custody of Helena, the case reached the Supreme Court, but not by

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saltum) under Article 29.2.i of the Rules of Procedure of the IACHR, and was registered under number P-458-22.

40. On September 18, 2022, the Commission forwarded the petition to the State of Mekinés for it to reply to the petitioners' allegations and arguments within three months. The State of Mekinés argued that the inter-American human rights system requires the trust and commitment of the member States, and that this relationship could be undermined if the Court takes an overly regimented approach and fails to consider the majority sentiments of the States, and that a certain margin of appreciation and deference should therefore be granted. The State maintained that this should not be interpreted as questioning the competence of the IACHR, and it expressly waived its right to file preliminary objections. However, the State of



all spheres of government, including the justice system. These measures should be accompanied by adequate human and financial resources to ensure their implementation and training programs for the public servants involved in upholding these rights; and (iii) review its racial justice and religious freedom policies, plans, and programs to protect the human rights of the victims of hate crimes; maintain an up-to-date database on religious freedom and racial discrimination; and provide legal and psychological assistance to persons affected by such offenses.

43. Once the deadline and the requirements of the Convention and the Commission's Rules of Procedure were met, and because the State of Mekinés did not consider it necessary to implement any of the recommendations made by the IACHR, the case was submitted to the jurisdiction of the Inter-American Court of Human Rights on December 15, 2022, alleging the violation of the same articles specified by the petitioners and in the Commission's report on the merits.